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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 198.

THE UNITED STATES, PLAINTIFF IN ERROR,

v.

THE MISSION ROCK COMPANY.

Supplemental Memorandum on Matters Stated in Brief for the United States Filed Since Submission.

1. At common law the right of the owner of lands fronting on the shore to wharf out does not exist (*Shively v. Bowlby; Weber v. Harbor Comm'rs, sup.*).

2. *Yates v. Milwaukee* states the law of Wisconsin on the subject of riparian rights on a navigable *stream*. *Weber v. Harbor Commissioners* confines the rule to a stream, as we read the case, and shows that, except where legislation or immemorial usage has changed the rule, the right of wharfing out does *not* vest at common law in the riparian proprietor on the *sea shore*.

3. California adopted the common law at its first session (*Stat.* 1850, p. 219), and at the same session asserted its do-

minion over tide lands in the State by disposing of those fronting on San Francisco (*Stat.* 1850, p. 307).

4. *Pacific Imp. Co. v. Ellert*, 64 F. R., 425, decided by Judge McKenna, reviews the California law on this subject and distinctly holds that the State may sell its submerged lands free of any easement whatever in favor of the riparian proprietor. In the recent case, *Oakland v. Oakland Water Front Co.*, 118 Cal., 160, the supreme court of the State asserts that the doctrine of the Chicago Water Front case has always been the law of California, and (p. 185) distinctly recognizes that the alienation of the tide lands by the State "may pre-"vent access to the navigable waters of the bay." This cannot be helped.

5. In *Pacific Imp. Co. v. Ellert*, page 439 (*sup.*), it is said that *Shirley v. Bishop*, 67 Cal., 543, shows *not* that "the ri-"parian rights of an owner of land bordering on Carquinez "strait were explicitly upheld" (as claimed by the Solicitor General), but that "there was *no question of riparian rights" involved*—a marked difference.

6. Nowhere is it held, as we read the cases, that the riparian proprietor acquires a title to the tide or submerged lands simply because he may at some time in the future desire and has the right to wharf out.

Respectfully submitted.

CHARLES PAGE,
Attorney for Defendant in Error.

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